IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

RCRev..No. 423 of 2006

RCA.34/2006 of DISTRICT JUDGE/RENT CONTROL APPELLATE AUTHORITY,KOZHIKODE
RCP.11/2003 of PRL.MUNSIFF & RENT CONTROL COURT.,KOZHIKOD-II.
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REVISION PETITIONER/APPELLANT/RESPONDENT:

M.SHIBU, S/O.M.T.BALAKRISHNAN,
32 YEARS, 18/673, TALI, KOZHIKODE 673 004,
KASABA AMSOM AND DESOM OF KOZHIKODE TALUK,REP.BY HIS P/A.HOLDER RESHMA M.T.,D/O.LATE METHAL THODI-BALAKRISHNAN, AGED 28,RESIDING AT METHAL THODI, KARIYAMBURATH PARAMBA,PUTHIYARA PO,KOZHIKODE- 4.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS: RESPONDENT/PETITIONER:
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1. RADHA IYER,
D/O.RAMANATHAN, AGED 55,RESIDING AT 18/675,
PUTHANKOVILAKAM, TALI, KOZHIKODE 673 002,
KASABA AMSOM, KARIAKKUNNU DESOM, KOZHIKODE TALUK.

2. VIJAYA, D/O.RADHA ILYER,
AGED 32, RESIDING AT 18/675, PUTHANKOVILAKAM,
TALI, KOZHIKODE 673 002, KASABA AMSOM,
KARIAKKUNNU DESOM, KOZHIKODE TLUK.

3. GEETHANJALI, D/O.RADHA IYER,

AGED 27, RESIDING AT 18/675, PUTHAN KOVILAKAM,
TALI, KOZHIKODE 673 002, KASABA AMSOM AND DESOM
OF KOZHIKODE TALUK.

4. RAMAKRIHNAN, S/O.RADHA IYER,
AGED 22, RESIDING AT 18/675,
PUTHAN KOVILAKAM, TALIL, KOZHIKODE 673 002,
KASABA AMSOM AND DESOM OF KOZHIKODE TALUK.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 05/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR & K.R. UDAYABHANU, JJ.

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R.C.R.No. 423 of 2006

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DATED THIS THE 5th DAY OF DECEMBER 2006

ORDER

Udayabhanu,J.

The petitioner is the tenant under orders of eviction on having concurrently found by the Rent Control Court as well as by the Rent Control Appellate Authority as to the claim of the respondent/landlord. The bona fide need put forward is for the purpose of the first respondent's children, who are respondents 2 to 4, to start business in computer accessories and office stationary.

2. The evidence adduced in the matter consisted of the testimony of PW1,1st respondent and that of the petitioner,RW1. It was submitted that there was nothing to suspect the bona fides of the first respondent. Nothing convincing was put forward before the courts below as to the lack of capacity of the respondents/landlords to start business and run the same. Just re-appreciation of evidence is not contemplated in revisional proceedings.

3. The contention raised before this Court is that the respondents have already obtained vacant possession of an adjacent room during

the pendency of the present proceedings. It can be seen that it is after the order passed by the appellate authority that the first respondent has obtained vacant possession of the adjacent premises. At the time of filing of the petition, the possession of the above premises were not obtained. In the circumstances, we find that the 1st proviso to Section 11(3) of the Kerala Buildings (Lease & Rent Control)Act,1965 would not be attracted. On a consideration of the judgments of the courts below, we find no reason to interfere.

All the same, considering the plea of the counsel for the petitioner, in order to facilitate the shifting of the business of the revision petitioner/tenant, a period of six months time from today onwards is granted on condition that he shall remit the entire arrears of rent and shall continue to remit the future rent and file an affidavit in this regard before the execution court within 15 days from today onwards. Premises shall be handed over on or before 5-6-2007. The Rent Control Revision is disposed of accordingly.

Sd/-

K.A.ABDUL GAFOOR
JUDGE

Sd/-

K.R.UDAYABHANU,
JUDGE

ks.

ks.